IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5588-2017(O&M)
Reserved on:-4.7.2023
Date of Pronouncement:-11.7.2023

Shriram General Insurance Company Ltd.

...Appellant

Versus

Anita and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Punit Jain, Advocate
for the appellant.

Dr.Rishi Pal Singh, Advocate
for respondents No.1 and 2.

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H.S. MADAAN, J.

1. Briefly stated, facts of the case are that on 20.8.2014 Manish (since deceased) was driving motorcycle bearing registration No.HR-99-HZ(Temp.) - 9165 coming from Kurukshetra and going towards village Manak Majri, Karnal; one Sahil was pillion riding that motorcycle; at about 2 O' clock in the early morning of 21.8.2014, when they had reached near Old Police Station, Butana on the G.T. Road, a stray cattle came in front of the motorcycle due to which, an accident taken place; both the riders fell down on the road and suffered multiple injuries; Manish was shifted to General Hospital, Nilokheri in the Highway Ambulance, where the doctor referred him to General Hospital, Karnal then Manish was shifted to Trauma Centre, KCGMCH, Karnal, where he

succumbed to the injuries suffered by him in the accident. Postmortem examination on his dead body was carried out on 21.8.2014. The matter was reported to the police by Sahil, on the basis of which DDR No.11 dated 21.8.2014 was recorded at Police Station Butana, District Karnal.

2. The legal representatives of deceased, namely, his parents i.e. mother – Smt.Anita, aged 40 years and father – Sh.Pritam Singh, aged 42 years, both residents of village Manak Majra, District Karnal, now at House No.773, Sector 30, Umri Chowk, Kurukshetra, had filed a claim petition under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against the respondents i.e. Hazari Lal – owner and Shriram General Insurance Company Ltd. Sitapura, Jaipur – insurer of the motorcycle in question.

3. According to the petitioners/claimants, the deceased was 22 years and was a skilled worker; he was in private employment and was earning Rs.40,000/- per annum; he used to spend his entire income on his family and petitioners were fully dependent upon his earnings.

4. On being given notice, the respondents appeared and filed written statements contesting the claim petition. Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence in support of their respective claims.

5. After hearing arguments, the Motor Accidents Claims Tribunal, Karnal (hereinafter referred to as the Tribunal) while allowing the claim petition partly vide award dated 21.3.2017, granted a compensation of Rs.5,81,400/- as per details below:

Sr.No.	Heads	Calculations

(i)	Total monthly income assessed is	Rs.3,300/- per month
(ii)	1/2 of (ii) deducted as personal expenses of the deceased	Rs.1650/-. The amount remains Rs.3300 – 1650 = Rs.1650/- per month
(iv)	The assessment of per annum comes to	Rs.1650 x 12 = Rs.19800/- per annum
(v)	Compensation after applying multiplier of 18 comes to	Rs.19800 x 18 = Rs.3,56,400/-
(vi)	Loss of love and affection to the petitioners	Rs.2,00,000/-
(vii)	Funeral and transportation charges	Rs.25,000/-
	Total	Rs.5,81,400

The claimants were granted interest @ 9% per annum on this amount of compensation from the date of filing of the claim petition till its realization, payable by both the respondents jointly and severally. The compensation amount was ordered to be paid to both the claimants in equal shares.

6. This award left the respondent No.2 - insurance company aggrieved and it has approached this Court by way of filing the present appeal praying that the same be accepted, the impugned award be set aside and the appellant – insurance company be absolved of its liability to pay compensation to the claimants.

7. Notice of the appeal was given to the respondents and respondents No.1 and 2 have put in appearance through counsel.

8. I have heard learned counsel for the parties besides going through the record.

9. Section 163-A of the Act is a special provision with regard to payment of compensation on structured formula basis. It provides that

notwithstanding anything contained in the act or in any other law for the time being etc., the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

In that way, the petitioners/claimants are not required to prove that accident in which the victim had lost his life had taken place on account of any rash and negligent driving of the vehicle. The only thing to be seen is that the victim had died on account of suffering injuries in an accident arising out of use of a motor vehicle.

10. As per the second schedule under Section 163-A compensation payable in case of death shall be Rs.5 lakhs.

11. Here the Tribunal clearly fell in error in awarding compensation more than Rs.5 lakhs. Even if, we take the income of deceased as Rs.40,000/- per annum and addition of 40% is made towards future prospects, the same comes out to Rs.56,000/- per annum and after deducting 50% towards personal and living expenses, the dependency of the the petitioners/claimants comes out to be Rs.28,000/- per annum. Considering the age of deceased to be 23 years if multiplier of 18 is used, the compensation would come out to be Rs.5,04,000/- and after adding Rs.70,000/- under the conventional heads, the amount would work out to be Rs.5,74,000/-.

However, the maximum limit under Section 163-A is of Rs.5 lakhs. Though the amendment in Motor Vehicles Act, 1988 providing the minimum compensation of Rs.5 lakhs has come into being after passing of the award but that was during pendency of the appeal, which amount to continuation of the proceedings and benefit thereof can certainly be given to the petitioners/claimants.

12. If we take into consideration the second schedule, then age of the deceased having been found to be 23 years and his monthly income as Rs.3,300/-. Under the schedule 1/3rd of the amount is to be deducted towards personal and living expenses of the deceased, the monthly dependency of the claimants comes out to Rs.2,200/-, the annual dependency to be Rs.26,400/- (2200 x 12). If using multiplier of 17 as provided in the schedule, the total compensation comes out to Rs.4,48,800/- (26400 x 17). The claimants are entitled to get funeral expenses of Rs.2,000/- and loss of estate as Rs.2,500/-. The total compensation thus comes out to Rs.4,53,300/-(4,48,800 + 2000 + 2500).

13. As per amendment in the provision a minimum payable in case of death in the road side accident has been given to be Rs.5 lakhs.

14. Learned counsel for the insurance company has submitted that liability of the insurance company is limited to Rs.1 lakh only since the deceased had stepped into the shoes of the owner having borrowed the motorcycle from registered owner Hazari Lal, thus had stepped into his shoes. He has referred to various judgments in support of his contentions i.e. ***Vasuki & Anr. Versus Santhi & Anr., 2022 ACJ 244*** and ***Ramkhiladi & Anr. Versus United India Insurance Company & Anr., 2020 ACJ 627*** by the Apex Court and FAO No.7510 of 2017 decided on 27.2.2023 titled ***Pardeep Kumar Versus Kapoor Singh & Another*** by a

Coordinate Bench of this Court.

15. However, I do not find any merit in this contention since it is not established on record that deceased had borrowed the motorcycle from Hazari Lal, in that way had stepped into his shoes. The Tribunal has dealt with this matter in detail and rightly rejected such plea raised by the insurance company.

16. In view of the detailed discussion above, the appeal is allowed partly. The impugned award is modified and compensation of Rs.5,81,400/- granted by the Tribunal to the petitioners/claimants is reduced to Rs.5 lakhs. Other terms and conditions with regard to the rate of interest, mode of payment and apportionment shall remain the same as in the original award. The excess amount if received by claimants be returned by them otherwise the appellant – insurance company shall be entitled to recover it by filing an execution application before the Tribunal.

17. With such modification, the appeal is allowed partly with costs.

Since the appeal stands allowed partly, the miscellaneous application(s), if any, stand disposed of accordingly.

11.7.2023 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No